CT/001 (1) 3

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

WRIT PETITION NO. 2616 OF 2005

PETITIONER

P.R. No. 2702/05
Presented by Shri Rakesh Pandey
dated 12/6/05

Hriday Narayan Singh, S/o Late Shiv Vachan Singh, aged about 42 years, Warder (Prahari), Subsidiary Jail Pendra Road, R/o Jail Line Pendra Road, Tehsil- Pendra Road, Distt. Bilaspur, (C.G.)

VERSUS

RESPONCENTS

1. State of Chhattisgarh Through – The Secretary of Home affairs (jail)Department, D.K.S Bhawan Raipur (C.G.)

2. The Director General of Police & Inspector General of Jails Chhattisgarh, Office at Raipur, Tehsil & Distt. Raipur (C.G.)

3. The Superintendent of Jail Central Jail Bilaspur Tehsil & Distt. Bilaspur (C.G.)

4. The Superintendent of Jail Central Jail Jagadalpur Tehsil & Distt. Jagdalpur (C.G.)

5. Superintendent Mini Jail Sukma, Tehsil- Sukma, Distt. Jagdalpur (C.G.)

6. Shri Ghanshyam Prasad Ghosle, Warder (Prahri) Mini Jail Pendra Road, Jail Line Pendra Road, Distt. Bilaspur (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUE OF AN APPROPRIATE WRIT IN THE NATURE OF MANDAMUS/CERTIORARI ETC. OR DIRECTION/ORDER IN THE LIKE NATURE ETC.

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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH
Writ Petition No. 2616 of 2005

Hriday Narayan Singh

- Versus -

State of Chhattisgarh and others

Shri Rakesh Pandey, counsel for the petitioner.
Shri Ramakant Mishra, Govt. Advocate for the State.
Shri Yashvant Singh, Advocate for respondent No. 6.

O R D E R

Heard.

2. By this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the order dated 11-8-2004 Annexure P-2 passed by respondent No. 1 whereby he has been transferred from Sub Jail, Pendra Road to Sub Jail, Sukma and the respondent no. 6 has been transferred from Sub Jail, Sukma to Sub Jail, Pendra Road. He has also challenged the order dated 28-5-2005 Annexure P-1 whereby his representation against the transfer order dated 11-8-2004 has been rejected.

3. Counsel for the petitioner submitted that he initially filed a Writ Petition bearing W.P. No. 4996/2004 (Hriday Narayan Singh –v- State of Chhattisgarh and others), which was decided vide order dated 12-4-2005 with a direction to the respondents to consider and decide the representation of the petitioner. Counsel submitted that he submitted a representation, which has been decided on 28-5-2005 as per Annexure P-1 whereby his representation has been rejected. Counsel submits that while deciding the representation,

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the relevant rules have not been considered and it has been rejected mechanically without assigning any reason. Then he has filed this petition.

4. Notices were issued and the returns on behalf of respondents no. 1 to 5 and respondent no. 6 have been filed.

5. Counsel for the petitioner submits that transfer is regulated by Statutory Rules known as C.G. Prisons Rules. Counsel for the petitioner submits that according to Rule 202 of the Prisons Rules, 1968, no warder can be appointed to a jail in his native district nor to a jail in a district in which he has been long resident. Counsel for the petitioner further submits that under Rule 208 of the Prisons Rules, 1968, procedure relating to transfer of warders have been prescribed. He also submitted that according to rule 208(2), transfer of warders from one circle to another shall not be made except for special reasons and then only mutual interchange shall be allowed, with the consent of the parties concerned and the Superintendent of both headquarters jail. Each warder so transfer shall pay his own travelling expenses. Counsel for the petitioner submits that in the instant case, respondent no.6 has been brought to his own district and the petitioner has never consented for mutual transfer.

6. Counsel for respondents submits that the petitioner has remained in Pendra Road for last 5½ years, and therefore he has been transferred.

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7. Before proceeding further, it is pertinent to quote Rules 200, 201, 202 and 208 of the C.G./M.P. Prisons Rules, 1968:-

> *"200. **Superintendent of headquarter Jails empowered to appoint warders.-** The appointment, transfer and promotion respectively, of warders within each circle shall rest with the Superintendent of the Headquarters jail of such circle.*
>
> *201. **Warders on appointment be informed of conditions of service.-** Every warder entertained in any jail shall be informed at the time of entertainment, that ordinarily his appointment is made subject to his being liable to serve at any jail within the limits of the circle in which the jail is situated but that in the interests of the service it may be necessary to transfer him to any other circle in the State.*
>
> *202. **Warders not to be appointed to jails in their native districts and period after which they be transferred.-** No warder shall be appointed to a jail in his native district nor to a jail in a district in which he has been long resident. No warder shall ordinarily be allowed to remain in a Central jail for more than five years, or in District Jail for more than three years, or in subsidiary jail for more than one year.*
>
> *208. **Procedure relating to transfer of warders.-** (1) When a transfer of a warder is ordered by the Superintendent of a headquarters jail, he shall fix a date on which the warder concerned shall start for his destination, allowing sufficient time for his instructions to be received and to be acted upon, and the warder shall be dispatched on the date fixed unless this is impracticable on account of sickness or for some other equally important reason, in which case timely intimation shall be given to the Superintendent of the headquarters jail, to enable him to make other arrangements and fix some other date if necessary. No casual or other leave shall be granted to a warder whose transfer is ordered, so as to have effect after the date for his despatch.*

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(2) Transfer of warders from one circle to another shall not been made except for special reasons and then only mutual interchange shall be allowed, with the consent of the parties concerned and the Superintendent of both headquarters jails. Each warder so transfer shall pay his own travelling expenses."

8. Though the transfer is an exigency of service and Courts do not interfere in transfer matters, but when Statutory Rules are violated, the matter falls within the ambit of Judicial Review. As per Rule 200 of the C.G. Prisons Rules 1968, the appointment, transfer and promotion of warders within each circle shall rest with the Superintendent of the Headquarters jail of such circle. According to Rule 202, no warder shall be appointed to a jail in his native district. Further according to Rule 208(2) of the Rules, the transfer of warders from one circle to another shall not be made except for special reasons and then only mutual interchange shall be allowed, with the consent of the parties. As contended by the learned counsel for the petitioner, the petitioner never consented for mutual transfer with the respondent No. 6. The respondent no. 6 has been transferred on his own expenses, but the petitioner has never consented for his transfer. The petitioner could only be transferred within the circle that too by the Superintendent of Jails. The transfer made is against the statutory rules. The policy cannot over ride the statutory rules.

9. In *Abani Kanta Ray vs. State of Orissa* reported in *1995 Suppl.(4) SCC 169*, the Supreme Court opined that a transfer which

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is an incident of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer.

10. The Apex Court further in the case *Mrs. Shilpi Bose vs. State of Bihar* reported in *AIR 1991 SC 532* has held that the Courts should not interfere with transfer orders when are made in public interest or on administrative grounds unless they are made in violation of mandatory statutory rules or on the ground of mala fide.

11. In view of the law laid down, it is amply clear that where the rules have been framed as in the present case, then the rules have to be observed and followed strictly and breach of rule is actionable and is within the ambit of judicial review. Since the transfer is in violation of the specific rule framed under the C.G./M.P. Prisons Rules, the same is not sustainable.

12. Having thus considered the facts and circumstances of the case and material on record, and in view of the discussions made in foregoing paragraphs which goes to show that the transfer is against the Statutory Rules, the impugned order Annexure P-2 dated 11-8-2004 and the order dated 28-5-2005 Annexure P-1 rejecting the representation made by the petitioner are liable to be and are set aside accordingly.

The petition is allowed with costs.

Counsel fee as Rs.1000/-.

Sd/-
Fakhruddin
Judge

P/-